THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No. 17085 of 1997

Dated: 24-09-2007

Between:-

State Bank of Hyderabad,
Exhibition Grounds,
Hyderabad, rep., by its Manager.

..Petitioner

And

Ch. Sailaja and another.

..Respondents.

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:O R D E R:

The State Bank of Hyderabad, Exhibition Grounds branch, Hyderabad represented by its Manager approached this Court and filed the present writ petition seeking a writ of Certiorari to quash the Award Order dated 07-07-1997 in complaint No. 20/97 on the file Banking Ombudsman, Reserve Bank of India Building, Saifabad, Hyderabad -- second respondent.

Brief facts are that the husband of the first respondent approached the petitioner-Bank for a loan to the tune of

Rs.2,37,000-00 to purchase Flat No.309, Jamuna Mansion, Chirag Ali Lane, Hyderabad and executed medium term loan agreement on

11-05-1991. One K.S. Rao stood as guarantor for the loan and possession of the flat was also delivered to the husband of the first respondent. However, the loanee had committed default in payment of instalments thereby the Bank got issued notices for payment of the loan amount.

Paltry amount has been paid towards loan account and also promised to liquidate the loan amount at the earliest possible. In spite of affording opportunity, the lonee could not clear the loan amount. While the bank started to initiate proceedings to recover the amount, first respondent approached the bank by a letter dated 03-06-1996 and requested to accept Rs.3,30,000-00 as one time settlement by waving interest. As the first respondent handling auditing work of Bank, on compassionate grounds, bank agreed her request. The bank, by letter dated 19-07-1996 intimated its acceptance of the offer. Again by letter dated 11-11-1996 the bank called upon first respondent to pay Rs.3,30,000-00. Thereafter, the first respondent did not respond. The petitioner got issued legal notice dated 05-02-1997 to the first respondent, loanee (her husband) and K.S. Rao, guarantor stating that Rs.2,00,000-00 was a lien and as first respondent did not comply with the compromise, they should pay Rs.4,91,712-00 towards loan amount. The first respondent, by letter dated 15-02-1997 sought withdrawal of Rs.2,00,000-00 to credit the amount from FDR's to SB Account No. 5959. As no payments have been made, the Bank had to file O.S.No. 528 of 1997 on 19-03-1997 before the learned II-Additional Judge, City Civil Court, Hyderabad against first respondent and her husband for recovery of Rs.5,79,685-00 together with interest at 16%.

By letter dated 20-03-1997 the bank intimated the respondent No.1 that the suit has been filed against her and that she made a complaint to bank on 08-03-1997 that her cheque was dishonoured. The first respondent by complaint No. 20/97 complained the same to the second respondent on 15-04-1997. The second respondent by the award dated 07-07-1997 in Complaint No. 20 of 1997 directed the petitioner to pay fixed deposit of Rs.2,00,000-00 after respondent No.1 surrenders the discharge receipt by letter dated 21-07-1997. Aggrieved by the same, this writ petition.

The main contention of the learned counsel for the petitioner Mr. E. Ramanadham is that in view of the pendency of the suit O.S.No.528 of 1997 on the file of II-Additional Judge, City Civil Court, Hyderabad, the Ombudsman ought not to have gone into this aspect, as the scheme provided for i.e., the Banking Ombudsman Scheme, 1995 (for short 'the Scheme') strictly prohibits any complaint to the Banking Ombudsman, if any suit with regard to the very same subject matter is pending.

In this context, learned counsel has drawn my attention to Clause-16 in Chapter IV of the Scheme, which deals with 'complaint'. Clause 16 sub-clause (3) (d) of the Scheme states that no complaint to the banking Ombudsman shall lie, unless the complaint is not the same subject matter for which any proceedings before any court, tribunal or arbitrator or any other forum is pending or a decree or award or order of dismissal has

already been passed by any such Court, tribunal, arbitrator or forum."

Further, it is the contention of the learned counsel for the respondents that in view of the fact that the first respondent has come forward and agreed to settle the matter by paying an amount of Rs.3,30,000-00 by way of one time settlement, it is implied that she is a guarantor and as such, the said suit instituted by the petitioner is not maintainable.

Heard the learned counsel for the respondents.

There is no ambiguity in interpreting Clause 16 of the Scheme. If any proceeding that is a suit before a competent civil Court is pending, no complaint to the banking Ombudsman shall lie. But the first respondent who instituted the complaint before the Ombudsman, though a party to the suit proceeding i.e., O.S.No. 528 of 1997, she is not one of the guarantors. In fact, even according to the petitioner-bank, one K.S. Rao stood as guarantor for the loan obtained by the husband of the first respondent. However, subsequently the first respondent has come forward and offered to clear off the loan as she was impleaded as one of the defendants in the suit.

From the facts above, it is clear that the first respondent is not at all a necessary party and she cannot be treated as guarantor to the loan obtained by her husband. In the light of the same, the Ombudsman has given a categorical finding that the suit cannot be treated

as a proceeding against the first respondent and this finding clinchingly supports the contention that the first respondent is not liable to pay the amount due from her husband.

Hence this Court is of the view that the finding arrived at by the Ombudsman, who is arrayed as second respondent, is justified and no interference is called for.

Further, it is brought to the notice of this Court by both the learned counsel that O.S.No. 528 of 1997 is decreed fixing the liability on the original borrower i.e., the husband of the first respondent and the guarantor – K.S. Rao by a judgment dated
17-03-1997. In fact, the Civil Court also gave a clear finding that the first respondent herein cannot be fastened with the liability as she is not a guarantor to the loan obtained by the husband of the first respondent. For this reason also, this Court is of the view that the finding of Ombudsman that the first respondent is not responsible for the loan amount obtained by the husband of the first respondent cannot be interfered with.

As the amounts belonging to the first respondent are lying with the petitioner-bank for the last so many years, the petitioner bank is hereby directed to release the amounts in favour of the first respondent with accrued interest at an early date preferably within a period of two months from the date of receipt of a copy of this order. There are no merits in this writ petition. It is accordingly dismissed. No costs.

GOPALA KRISHNA
TAMADA, J

Dated: 24-09-2007.
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